IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.12.2006

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.No.177 of 2001

T.K.Kameswaran .. Petitioner (Landlord)

vs.

R.Santhanakrishnan .. Respondent (Tenant)

Revision Petition under Section 25 of Tamil Nadu Buildings Lease and Rent Control Act as amended Act 18/60 and 1/80 filed against the order dated 6.7.1999 passed in R.C.A.No.859/1995 on the file of VIII Small Causes Court, Madras (Rent Control Appellate Authority) confirming the order dated 20.10.1995 passed in RCOP No.753/1989, on the file of the XV Small Causes Court, (Rent Control Authority) Madras.

For Petitioner : Mr.S.Venkateswaran
for M/s.Hema Sampath
For Respondent : Mr.S.Partheeban

ORDER:

This Revision Petition has been filed against the order dated 6.7.1999 passed in R.C.A.No.859/1995 on the file of VIII Small Causes Court, Madras (Rent Control Appellate Authority) confirming the order dated 20.10.1995 passed in RCOP No.753/1989, on the file of the XV Small Causes Court,(Rent Control Authority) Madras.

2. The landlord is the revision petitioner. He filed RCOP No.753/1989 on the file of the rent controller (15th Small Causes Judge) under Sec.10(3)(a)(iii) and 10(2)(v) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, hereinafter called 'the Act'. The rent controller by order dated 20.10.1995 allowed the RCOP No.753/1989 only on the ground of 10(3)(a)(iii) and rejected the RCOP on the other ground. Aggrieved by the order dated 20.10.1995 the tenant alone filed an appeal in RCA No.859/1995 and the appellate authority by order dated 6.7.1999 held that the landlord has not proved his bonafide in requiring the petition property for his own occupation and the landlord has failed to prove that the tenant is guilty of such an act and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

conduct which are nuisance to the occupiers of the other portions in the same building or buildings in the neighbourhood. Aggrieved by the order of the appellate authority dated 6.7.1999, the landlord has filed the above revision petition under Sec.25 of the Act, 1960.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent. I have also gone through the documents and the judgments referred to by them in support of their submissions.

4. It is the case of the landlord that he is a Chartered Accountant and he is in need of the portion in the occupation of the tenant for his professional use. It is further stated by him that the tenant is a source of perennial nuisance of other occupants of the premises and the neighbours. The noise emanating from the tenant's shop is unbearable. He further stated that the tenant is causing obstruction by parading his semi finished and finished products on the road opposite to the shop which leads to traffic hazards.

5. The tenant opposed the RCOP No.753/1989 by filing a counter by stating that the area occupied by him is only 150 sq.ft., and not 227 sq.ft., as wrongly stated in the RCOP. He is running a welding and fabricated shop after obtaining a valid licence from the Chennai Corporation. He was also issued with the permanent Small Scale Industrial certificate in the premises by the Regional Deputy Director of Industries and Commerce, Chennai.2. He further pleaded that he is in occupation of the premises for more than 25 years. Therefore the allegation of the landlord that his business is a source of perennial nuisance to others is not correct. He further questioned the attitude of the landlord in filing a petition for fixation of fair rent and also RCOP No.753/1989 and stated that there is no bonafide in the petition.

6. The rent controller after going through the evidence held that the landlord has not proved his case for getting an order of eviction under Sec.10(2)(v) of the Act, 1960. Even though no appeal was filed by the landlord against the rejection of the RCOP under Sec.10(2)(v), he was allowed to argue on that ground also by the appellate authority. The appellate authority after re-appreciating the evidence has come to the conclusion that the landlord has not proved his case for getting an order of eviction under Sec.10(2)(v) of the Act, 1960. Even though the petitioner/landlord made an attempt before this court to contend that the landlord has made out a case for getting an order of eviction under Sec.10(2)(v) also, I am unable to accept the same since both the authorities below have concurrently held that the landlord has not proved his case to contend that the tenant is a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

source of perennial nuisance to other occupants of the premises and the neighbours of the tenant causing obstruction in the road leading to traffic hazards.

7. Hence the order of the appellate authority below in holding that the landlord has failed to prove his case under Sec.10(2)(v) of the Act is upheld.

8. Insofar as the eviction ordered by the rent controller under Sec.10(3)(a)(iii) is concerned, the rent controller by order dated 20.10.1995 held that the landlord bonafidely required a portion of the petition premises for his own occupation. The rent controller solely relied on Ex.P3 for this purpose. The appellate authority after pointing out that the landlord has mentioned in the RCOP that he is a Chartered Accountant only, referred to his deposition in which he deposed that he has been employed in Tamil Nadu Petro Chemical Product for the past 5 years and prior to that he was employed with SPIC as Joint General Manager and his employer permitted him to practice separately and he has been practising as a Chartered Accountant for the past 20 years. The appellate authority observed that there is contradiction in the averment contained in the petition and his deposition. The appellate authority has also observed that no evidence has been given by the landlord to prove that he has been practising as Chartered Accountant for the past 20 years, excepting Ex.P3. The appellate authority has rendered a finding that Ex.P3 has not proved the contention of the landlord and in such circumstances held that the landlord has not proved his case for getting an order of eviction under Sec.10(3)(a)(iii) of the Act. The appellate authority has also referred to the fact that another portion in the building was rented out by him to an Insurance Company and opined that if at all he was in real need of a portion for his possession, he would have definitely occupied the bigger portion rented out to the Insurance Company especially when the portion under occupation of the tenant measuring an extent of 227 sq.ft., only even according to the landlord and which was once used as a car shed.

9. The learned counsel for the revision petitioner vehemently contended that the Rent Control Original Petition is not a civil suit and absence of necessary averments in the petition will not vitiate the proceedings. For this proposition, he relied on the decision of this court reported in-
(1) 1992-2 M.L.J. 422 (Nemichand Jain v. Ethirajan)
(2) 2001-1 L.W. 153 (Puttalingam, L. v. L.Sivalingam) and the decision of the Supreme Court reported in-
(3) 1999(1) SCC 141 (Ram Narain v. Asha Rani).

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. Learned counsel for the revision petitioner further submitted that it is not necessary for the landlord to actually prove that he is carrying on his business and even if one step in a series of steps is taken in this regard, essential requirements under Sec.10(3)(a)(iii) would be satisfied. He relied on the following decisions in this regard:

(1)2000-3-L.W. 195 (T.V.Jagatrakshagan and others v. v. N.Futaree bai & others)
(2) 2003-2- M.L.J. 704 (Pooludaiyar Chettiar v. Gani)
(3) 1997-2- L.W. 607 (Thirunavukkarasu v. Vasantha Ammal).

11. Learned counsel for the revision petitioner further submitted that even if another portion fell vacant and the same was not occupied, that does not mean that the landlord has not proved his case under Sec.10(3)(a)(iii) of the Act. He relied on the decision of the Supreme Court reported in-
(1) 2001-3-L.W. 124 (Gaya Prasad v. Sh.Pradeep Srivastava) and the decision of this court reported in-
(2) 1998-3- L.W. 661 (V.T.Asokan and another v. Bowjiya Begum) for this purpose.

12. Per contra, learned counsel for the respondent/tenant submitted that the appellate authority has gone into the question of bonafides elaborately and has come to the conclusion that there is no bonafide on the part of the landlord in requiring this building for his occupation which need not be disturbed by this court in its revisional jurisdiction. He further submitted that words "carrying on business" under Sec.10(3)(a)(iii) is, the business must be carried on by the landlord on the date of filing of the petition and as the landlord has miserably failed to prove that he is carrying on his profession as a Chartered Accountant privately on the date of the petition for eviction, the landlord has not proved his bonafides under Sec.10(3)(a)(iii) of the Act. He relied on the decision reported in 1995-II- M.L.J. 67 (Mohambaram v. M/s.C.K.C.M.Kader Shah and Brothers).

13. I have considered the rival submissions carefully with reference to facts and citations.

14. The revision petitioner/landlord in RCOP No.753/1989 has merely stated that he is a Chartered Accountant and he bonafidely needs the portion in the occupation of the tenant for his professional use. But in his oral evidence i.e., in his chief-examination, the landlord has stated that after studying Chartered Accountancy, he is employed as Executive Director in Petro Chemicals and his employer permitted him to practice privately and Ex.P3 is the permission given to him by the management. In his cross-examination, he has admitted that he is employed for the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

last 5 years in Tamil Nadu Petro Products and prior to that he was employed as Joint General Manager in SPIC. He further stated that he has been practising privately for the past 20 years after obtaining permission from the management. He further admitted that he let out a portion in the building 3 or 4 months prior to the filing of the RCOP and further admitted that the said portion which was let out to Insurance Company was suitable for his profession. But he added that the petition premises is more suitable than that portion for his profession.

15. Before filing RCOP, the landlord sent a notice dated 24.10.1988 and even in that notice he has only stated that the landlord is a Chartered Accountant and he needs the portion under the occupation of the tenant for his professional use.

16. In the light of the above facts and circumstances, let me consider whether the revision petitioner/landlord has made out a case under Sec.10(3)(a)(iii) of the Act.

17. Sec.10(3)(a)(iii) reads as follows:

> "(3)(a) A landlord may, subject to the provisions of clause (d), apply to the Controller for an order directing the tenant to put the landlord in possession of the building-
>
> (i) in case it is residential building, if the landlord requires it for his own occupation or for the occupation of (any member of his family) and if he or (any member of his family is not occupying a residential building of his own in the city, town or village concerned;
>
> (ii) in case it is non-residential building which is used for the purpose of keeping a vehicle or adapted for such use, if the landlord requires it for his own use or for the use of (any member of his family) and if he or (any member of his family) is not occupying any such building in the city, town or village concerned which is his own;
>
> (iii) in case it is any other non-residential building, if the landlord or (any member of his family) is not occupying for purposes of a business which he or (any member of his family) is carrying on, a non-residential building in the city, town or village concerned which is own"

18. From the above, the landlord in the case of a non residential building, is not occupying the portion for the purpose of business which he or his family member is carrying on in a non residential building in the city, town or village which is own,

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

can apply to the rent controller for directing the tenant to put him in possession of the building. The rent controller shall if he is satisfied that the claim of the landlord is bonafide make an order directing the tenant to put the landlord in possession of the building and if the rent controller is not so satisfied he shall make an order rejecting the application as per Sec,.10(3)(e) of the Act.

19. It is very clear from the provision of the Act that when an application under Sec.10(3)(a)(iii) of the Act is filed, the rent controller has to satisfy himself that the claim of the landlord is bonafide.

20. Now let me consider whether the revision petitioner has proved his bonafide to put him in possession of the building under Sec.10(3)(a)(iii) of the Ac;t, 1960.

21. Neither in RCOP No.753/1989 nor in the notice dated 28.4.88 (Ex.P1) the landlord admitted that he is employed in Tamil Nadu Petro Products Limited as Executive Director. He has only stated that he is a Chartered Accountant and he is in need of the portion of the building under the occupation of the tenant. Only in his cross-examination he has stated that he is employed in Tamil Nadu Petro Products Limited for the past 5 years and prior to that he was employed as Joint General manager in SPIC and he has been practising Chartered Accountancy privately also after getting permission from the management. The only evidence he has let in to prove the above circumstance is Ex.P3 which is a certificate issued by the Managing Director of Tamil Nadu Petroproducts Limited. This certificate dated 10.7.1990 is marked as Ex.P3 which reads as under:

> "TO WHOMSOEVER IT MAY CONCERN"
>
> This is to certify that Shri T.K.Kameshwaran is employed as Executive Director (Finance) in our organisation. Prior to his joining this organisation Shri T.K.Kameshwaran was employed as Joint General Manager (Finance) in M/s.Southern Petrochemical Industries Corporation Limited (SPIC), one of the promoters of our Company. The management has permitted Shri T.K.Kameshwaran to have a certificate of practice to enable him take up certification and any other works connected with the provision of Chartered Accountancy. The Company has been remitting subscription for both membership and holding certificate of practice from the Institute of Chartered Accountants of India which is an independent

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

body enacted by an act of Parliament.

We wish him all success in his pursuit of professional career."

22. A reading of Ex.P3 will not establish the case of the landlord that he has been practising Chartered Accountancy for the last 20 years as contended by him. In fact it is a certificate given by the present employer and no such certificate has been produced from the past employer. In such circumstances I am in agreement with the rent control appellate authority that the landlord has not proved his bonafide under Sec.10(3)(a)(iii) of the Act for getting an order of eviction. Apart from that as an Executive Director his statement that the portion under the occupation of the tenant measuring an extent of 227 sq.ft., which was once a car shed is more suitable cannot be accepted. Hence the other portion which was let out to the Insurance Company creates a doubt about his bonafide in requiring the portion under the occupation of the tenant.

23. It is true that merely because necessary averments are not pleaded in the RCOP, it is not fatal to the case of the landlord provided he placed necessary material before the court and strict proof of pleading is not condition precedent for ordering eviction. But in the present case, the landlord has not produced proper and adequate materials to prove his case for getting the order of eviction under Sec.10(3)(a)(iii).

24. Various decisions have been cited by both the parties as mentioned above to submit that carrying on business means not actual carrying on business and even if one step is taken in a series of steps to be taken, the essential requirement would be satisfied. The respondent tenant has relied on the decision reported in 1995-II-M.L.J. 67(cited supra) to submit that carrying on business means that the landlord should carry on business on the date of filing of the petition.

25. I am not dealing with this decision elaborately as the crux of the matter is whether the landlord has proved his bonafides for getting an order of eviction under Sec.10(3)(a)(iii). I have already dealt with the entire pleading and the evidence let in by the revision petitioner and in my opinion they do not establish that there is bonafide on the part of the landlord in requiring the portion under the occupation of the tenant for his profession.

26. Yet another fact to be considered is the non-occupation of another portion when it became vacant 3 or 4 months prior to the filing of the RCOP is also to be held against the landlord or not? The decision relied on by the learned counsel for the revision

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

petitioner in this regard namely reported in 2001(3)L.W. 124 (cited supra) and 1998(3)L.W.661 (cited supra) are not helpful to the revision petitioner as they deal with the pleading of subsequent events put forward by the tenant to overshadow the bonafide need of the landlord. In the case on hand, there is no subsequent event. The event referred to by the appellate authority is just 3 or 4 months prior to the filing of the RCOP, the revision petitioner/landlord let out a portion of the building for the insurance company. As rightly held by the appellate authority if at all the revision petitioner is in bonafide need of a portion in the building for his own occupation, he would have definitely occupied the same and would not have let out to insurance company 3 or 4 months prior to the filing of the RCOP.

27. Considering the entire facts and circumstances of the case, namely, (1) the landlord is a private employee in a reputed company for the past 20 years, (2) this fact was not disclosed neither in Ex.P1 notice nor in RCOP No.753/1989 (3) this fact was disclosed for the first time in the oral evidence before the rent controller; (4) Ex.P3 is not helpful to the landlord to support his contention and (5) he has let out a portion in the building to the insurance company 3 or 4 months prior to the filing of the RCOP, it is to be held that there is a genuine doubt in the claim of the revision petitioner/landlord for getting an order of eviction under Sec.10(3)(a)(iii) and the revision petitioner has not proved his case bonafide by letting in acceptable evidence.

28. Therefore I do not find any merits in the above Revision Petition and consequently the Revision Petition is dismissed. No costs.

Sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

The Registrar,
Court of Small Causes Chennai

2. The Record Keeper, VR Section, High Court
Madras - 104

+ one cc to Mr.S. Parthiban, Advocate sr no. 62034
+ one cc to M/s. Hema Sampath, Advocate sr no. 62263

SR(CO)
NM(19.01.07)

C.R.P.177/01.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/